In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1207

ROBERT ALAN LAWRENCE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a trial to the court, a jury having been waived (2 R. 4),[1] petitioner was convicted of knowingly refusing to submit to induction into the armed forces, in violation of 50 U.S.C. App. 462 (1 R. 1–2; 2 R. 30). On November 30, 1965, he was sentenced to three years' imprisonment (1 R. 4; 2 R. 34). The court of appeals affirmed the conviction (370 F. 2d 388; Pet. App. A; 1 R. 11–22).

[1] The record on file with the Clerk consists of two separately paginated volumes. One contains the papers filed in the district court and the court of appeals ("1 R."), the other ("2 R.") is the trial transcript. We are lodging with the Clerk a certified copy of the Selective Service file ("S"), which was introduced by the government at trial.

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The government's evidence, consisting of a certified copy of petitioner's Selective Service file (G. Ex. 1,; 2 R. 6), revealed that on January 19, 1962, petitioner registered for the draft with Local Board No. 83 in Los Angeles, California (S. 1–2). On April 7, 1964, he filed answers to a classification questionnaire (S. 4–9), making no claim therein that he was a conscientious objector (S. 7). On June 8, 1964, he was classified 1–A (S. 11). Although aware of his right to appeal (2 R. 10), petitioner took no appeal from that classification (S. 11). On April 26, 1965, a finding of physical acceptability having been made (S. 14–17, 53–67), petitioner was sent an order to report for induction on May 25, 1965 (S. 18). On April 28, 1965, petitioner wrote to the local board, asserting that he could not comply with this order because he would not permit himself "to be trained as a professional killer" (S. 19–20). On May 14, 1965, the local board again sent to petitioner a copy of the order to report for induction (S. 19a). By letter, dated May 19, 1965, petitioner requested a postponement of the induction date so that he could complete "the current school semester"; he also stated that he had been accepted as a full-time student for the coming fall semester at San Francisco State College (S. 21; see also S. 22–25). On May 20, 1965, the local board postponed petitioner's induction until the June 1965 call, to permit him to complete the current school term (S. 27–28). On May 26, 1965, the local board sent petitioner a notice to report for induction on June 22, 1965 (S. 30). Petitioner reported as directed

but refused to submit to induction "on the basis of my personal moral convictions" (S. 32, 33, 48–50).

Six days later, on June 28, 1965, petitioner requested a conscientious objector form (SSS Form No. 150) from his local board (S. 34). In the form, which he filed with the local board on July 8, 1965, petitioner stated that he believed in a Supreme Being (S. 35), that he received the training and belief which provided the basis for his claim "by applying interpretation, organization and reason to everything in life which I have perceived", that he relied upon himself for religious guidance, and that he had given public expression to the views on which he based his claim in his lawyer's office on June 28, 1965 (S. 38). He requested a reopening of his classification. (S. 47). On July 12, 1965, the three members of the local board found that the facts presented did not warrant a reopening of petitioner's classification (S. 11, 72). At trial, petitioner testified that the reason he had not made his conscientious objections known before receiving the notice to report for induction was because he had not yet "crystallized" his thoughts into religious beliefs (2 R. 10).

The sole question presented (Pet. 2, 4) is whether petitioner was improperly denied the administrative review and related procedural safeguards provided by Section 6(j) of the Universal Military Training and Service Act (50 U.S.C. App. 456(j)) when his local board declined to reopen his classification upon his claim of conscientious objector status. The petition completely overlooks the fact that petitioner had already committed the offense for which he was con-

victed before he submitted his claim to his local board and requested reopening of his classification. Thus, whatever the merits of petitioner's contentions with respect to the procedures employed by the local board, they are quite irrelevant to the validity of his conviction.

Petitioner relies on a supposed conflict between the decision below and that of the Second Circuit in *United States* v. *Gearey*, 368 F. 2d 144, but the *Gearey* case is clearly distinguishable. The Second Circuit's opinion is concerned with the treatment to be accorded a registrant whose conscientious scruples against bearing arms first crystallize, and who claims exemption, during the period after receipt of a notice of induction and before the date set for induction. Selective Service Regulation 1625.2 (32 C.F.R. 1625.2) expressly prohibits local boards from reopening a registrant's classification after he has been sent an induction notice, "unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control." The Second Circuit held that Section 1625.2 was a reasonable regulation "clearly within the bounds" of the statutory rule-making authority (50 U.S.C. App. 460), without which "manpower quotas could rarely be met with any degree of certainty." 368 F. 2d at 149.[2] The court also held in

[2] See, also, *United States* v. *Al-Majied Muhammad*, 364 F. 2d 223 (C.A. 4); *United States* v. *Taylor*, 351 F. 2d 228 (C.A. 6); *United States* v. *Porter*, 314 F. 2d 833 (C.A. 7); *United States* v. *Beaver*, 309 F. 2d 273 (C.A. 4), certiorari denied, 371 U.S. 951; *Boyd* v. *United States*, 269 F. 2d 607, 611 (C.A. 9); *Keene* v. *United States*, 266 F. 2d 378, 384 (C.A. 10).

Gearey that where conscientious objections first mature and are claimed during the interval between notice to report and induction, "then a change in status would have occurred 'resulting from circumstances over which the registrant had no control,' and he would be entitled to be reclassified by the Local Board" (368 F. 2d at 150). The court found that this construction was necessary so as to avoid leaving a gap between the procedures available for investigating claims maturing prior to notice and those provided by the military services for claims arising after induction (368 F. 2d 149 n. 10, 150 n. 11).[3]

Petitioner, unlike Gearey, did not seek reclassification as a conscientious objector prior to the induction date; indeed, he does not suggest that his convictions had sufficiently matured to warrant such a claim by that date. The information supplied by petitioner on SSS Form 150 (S. 38) indicates that it was not until June 28, 1965, six days after he had refused induction, that he first gave public expression to the views, as finally crystalized, on which he based his claim. At the induction center on June 22, 1965, he refused induction solely on the basis of his "personal moral convictions" (S. 32). Petitioner does not contend that such convictions sufficed to bring him within Section 6(j), which expressly excludes "a

[3] See Department of Defense Directive No. 1300.6, ASD(M) (Aug. 21, 1962); Army Regulation No. 635-20 (Nov. 9, 1962); Department of the Navy, Bupers Instruction 1616.6 (Nov. 15, 1962); Marine Corps Order 1306.16A (Oct. 16, 1962); Air Force Regulation No. 35-24 (March 8, 1963).

merely personal moral code" as a basis for exemption. See *United States* v. *Seeger,* 380 U.S. 163.

Finally, even if the local board's refusal to reopen petitioner's classification were relevant in some way to his prior refusal to submit to induction, the board's decision was not based on Regulation 1625.2, as petitioner suggests. Rather, after reviewing petitioner's claim, the board decided that "the facts presented do not warrant the reopening or reclassification of your case" (S. 72). The board's decision, therefore, was entirely consistent with *Gearey* which held only that reopening could not be denied under Regulation 1625.2 where the claim for exemption matured after notice of induction.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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